

**ORIGINAL****FILED**

AUG 24 2012

RICHARD W. WIEKINS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 LUCAS VALLEY LAW  
 2 MARK K. de LANGIS (SBN 190083)  
 3 2110 Elderberry Lane  
 4 San Rafael, California 94903  
 5 Telephone: (415) 472-3892  
 6 Facsimile: (415) 472-3977  
 7 mdelangis@lucasvalleylaw.com  
 8 Attorney for Plaintiffs  
 9 APL CO. Pte., LTD. and  
 10 AMERICAN PRESIDENT LINES, LTD.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 APL CO. Pte., LTD., a corporation, and  
 14 AMERICAN PRESIDENT LINES, LTD., a  
 15 corporation,

16 Plaintiffs,

17 v.

18 EXPORT INTERNATIONAL INC., a  
 19 corporation,

20 Defendant.

No.

COMPLAINT FOR:

1. BREACH OF MARITIME CONTRACT;
2. OPEN ACCOUNT;
3. COMMON COUNT FOR SERVICES PERFORMED

**MEJ**

21 Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd. (collectively "APL")  
 22 complain against defendant Export International Inc. and allege as follows:

**JURISDICTION AND VENUE**

23 1. The following claims are admiralty and maritime claims within the meaning of  
 24 Rule 9(h) of the Federal Rules of Civil Procedure and fall within the admiralty jurisdiction of this  
 25 Court under 28 U.S.C. §1333.  
 26

1  
2           2.     Venue is proper in the Northern District of California because a substantial part of  
3 the contract's terms and conditions were negotiated by and between APL and defendant in the  
4 Northern District of California via APL's contract administration division, located in Oakland,  
5 California.

6  
7                                   **PARTIES**

8           3.     Plaintiff APL Co. Pte., Ltd. is, and at all relevant times was, a corporation duly  
9 organized and existing under the laws of Singapore and registered to do business in the State of  
10 California.

11           4.     Plaintiff American President Lines, Ltd. is, and at all relevant times was, a  
12 corporation duly organized and existing under the laws of the State of Delaware. Plaintiff  
13 American President Lines, Ltd. is registered to do business in California.

14           5.     APL is informed and believes, and on that basis alleges that defendant Export  
15 International Inc. ("defendant" or "Export") is, and at all relevant times was, a corporation duly  
16 organized and existing under the laws of the State of Delaware, with its principal place of  
17 business in Oregon.

18  
19                                   **GENERAL ALLEGATIONS**

20           6.     At all relevant times, APL was and still is an ocean carrier of goods for hire, *inter*  
21 *alia*, between U.S. and foreign ports.

22           7.     On or about February 25, 2009, APL and Export entered into a written service  
23 contract, number WB09/0072, whereby APL agreed to transport and convey various  
24 commodities from the United States to the Republic of Korea, on behalf of, and at the request of,  
25 Export.

1           8.       As part of the service contract entered into between Export and APL for the  
2 transportation and carriage of Export's cargo, Export expressly agreed to tender its cargo in a  
3 quantity sufficient to satisfy a Minimum Volume Commitment ("MVC") as outlined in the  
4 service contract between the parties. Specifically, the service contract stated:

5                   3. MINIMUM VOLUME COMMITMENT; DEAD FREIGHT;  
6 BOOKING

7                   (a) Merchant shall tender not less than the MVC, including  
8 specific sub-MVCs, if any, as set forth in an Appendix, during the  
9 term hereof. Shipments shall be deemed within the scope of this  
10 Contract and shall be counted toward the MVC if made by  
11 Merchant's parent, subsidiary, or other affiliated companies or  
12 entities under common control, or by an authorized agent in behalf  
13 of any such entity, all of which entities must be identified on the  
14 signature page or Appendix hereto. Merchant shall remain  
15 responsible to Carrier for all obligations of non Merchant parties  
16 shipping cargo under this Contract.

17           9.       The MVC, set forth at Appendix B, expressly obligated Export to tender a  
18 minimum quantity of carriage of 50 freight equivalent units ("FEU") before the contract  
19 expiration date of January 31, 2010.

20           10.       The service contract between APL and Export contained a liquidated damages  
21 provision (known in the trade as dead freight) which provided protection to APL in the event that  
22 Export failed to meet the MVC, as it had promised. The liquidated damages provision provided  
23 that:

24                   3. MINIMUM VOLUME COMMITMENT; DEAD FREIGHT;  
25 BOOKING

26                   ....

(b) If Merchant fails to tender shipments in sufficient quantity to  
meet Merchant's undertakings as set forth in the foregoing  
subparagraph 3(a), Merchant shall, within 30 calendar days of  
receipt of Carrier's invoice, pay deadfreight in the amount of \$350  
for each FEU by which the MVC (or sub-MVCs, as the case might  
be) exceeds the volume actually tendered.

1           11.     After the contract expired on January 31, 2010, APL reconciled the contract to  
2     determine whether Export had fulfilled its MVC and shipped the number of FEUs as promised.

3           12.     APL determined that during the contract's term, Export had failed to ship any  
4     FEUs with APL for transport and carriage. As stated above, Export had promised to ship 50  
5     FEUs under the contract, and in failing to ship the promised number of FEUs, came up short of  
6     its contracted volume by 50 FEUs. Accordingly, under the terms of the contract, Export became  
7     obligated to pay APL a liquidated damages charge ("dead freight") of \$17,500. (\$350 for each  
8     FEU short of the MVC [ $\$350 \times 50 = \$17,500$ ]).

9           13.     On April 9, 2010, APL issued an invoice to Export for \$17,500 and presented the  
10    invoice to Export for payment. According to the service contract's terms, Export had 30 days in  
11    which to pay the invoice.

12          14.     Export failed to pay the invoice within 30 days. And, despite further demands by  
13    APL, Export has failed to pay the dead freight owed to APL in connection with the above-  
14    described service contract and there is due and owing to APL, from Export, the amount of  
15    \$17,500 in dead freight charges, in connection with the above-described service contract.

16  
17                               **FIRST CAUSE OF ACTION**

18                               **(Breach of Maritime Contract)**

19          15.     APL refers to, and by that reference incorporates as if fully set forth herein, each  
20    and every allegation set forth in paragraphs 1 through 14, inclusive, hereinabove.

21          16.     Pursuant to the terms of the service contract entered into between the parties,  
22    Export expressly agreed that if it failed to tender the MVC, it would pay the dead freight charges  
23    due and owing under the above-described service contract.

24          17.     APL has performed or tendered performance of all of its obligations under the  
25    service contract.



1           18.     Export materially breached the terms of the service contract entered into between  
2     the parties by failing to tender the appropriate amount of FEUs under its MVC, and by failing to  
3     pay the dead freight charges within 30 days of receiving APL's invoice, as promised.

4           19.     As a direct and proximate cause of Export's breach of the service contract by  
5     failing to tender the appropriate amount of FEUs under its MVC, and by failing to pay the dead  
6     freight charges, APL has suffered damages in the amount of \$17,500 (excluding interest, costs  
7     and attorneys' fees).

8  
9                                   **SECOND CAUSE OF ACTION**

10                                   **(Open Account)**

11           20.     APL refers to, and by that reference incorporates as if fully set forth herein, each  
12     and every allegation set forth in paragraphs 1 through 19, inclusive, hereinabove.

13           21.     Export owes APL the sum of \$17,500 that is due with interest since May 2010, in  
14     accordance with the terms of the service contract more fully described above.

15           22.     APL has made demand for payment upon Export and Export has acknowledged  
16     receipt of said demand.

17           23.     Export has refused to pay and continues to refuse to pay the outstanding sum due  
18     and owing.

19  
20                                   **THIRD CAUSE OF ACTION**

21                                   **(Common Count - Services Performed)**

22           24.     APL refers to, and by that reference incorporates as if fully set forth herein, each  
23     and every allegation set forth in paragraphs 1 through 23, inclusive, hereinabove.

24           25.     Export is indebted to APL for the amount of \$17,500, for the services APL  
25     performed at Export's request.

WHEREFORE, Plaintiffs APL Co. Pte., Ltd. and American President Lines, Ltd.  
pray as follows:

1. The Court enter judgment in APL's favor for \$17,500, the full amount of APL's claim;
2. The Court award APL prejudgment interest on all sums as provided by law;
3. The Court award APL its costs of suit;
4. The Court award APL its attorneys' fees as per the terms of the service contract;
5. The Court award APL such other and further relief as the Court may deem proper.

DATED: August 24, 2012

LUCAS VALLEY LAW

By:

Mark K. de Langis  
Attorneys for Plaintiffs  
APL Co. Pte., Ltd. and  
AMERICAN PRESIDENT LINES, LTD.